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Feb. 20

Mr. Ralph G. Carpenter, 2nd, Director
Fish and Game Department
State House Annex

Dear Sir:

In a conference held on February 19, 1952, you have inquired whether it is proper to use the unexpended balances in the Fish and Game fund composed of income of previous years for the purpose of constructing one or more of the various capital items listed in Laws of 1951, chapter 254, section 2. This inquiry is answered in the affirmative.

The chapter cited generally makes provision for capital improvements and long-term repairs in respect to the property of the State. Section 2 is devoted exclusively to capital items for the Fish and Game Department; a total of \$32,000.00 is appropriated for some seven listed projects.

Provision is made in the chapter for the raising of the funds appropriated, the principal source being the issuance of bonds or notes by the State Treasurer with the approval of the Governor and Council. In respect to the bonds or notes issued to provide for the Fish and Game items, there appears the following:

"s. 8. The payment of principal and income on bonds or notes issued for the purposes of section 2 shall be from income of the fish and game department."

It is evident, then, that the capital items for which appropriation is made in section 2 are to be paid for out of fish and game income.

Turning now to Laws 1951, chapter 255, there appears below the regular appropriation for the Fish and Game Department the following provision: (Page 68)

"In addition to the above appropriation the fish and game department shall receive for disbursement any unexpended balances from income of previous years. Said additional amounts appropriated hereunder shall be expended under the direction of the fish and game commission, with the approval of the governor and council."

February 20, 1952

You advise that at the end of the fiscal year just passed there was in the Fish and Game funds a balance consisting of income from previous years sufficient in amount to pay for all or some of the items appearing in section 2 of chapter 254.

Considering the two quoted provisions together it appears clear that they may be deemed to represent alternative means of financing the cost of the items under consideration. The paramount factor pervading both is that such costs will in any event be paid from Fish and Game funds. The device of bonds and notes authorized in chapter 254 permits long-term financing of the capital items; in view, however, of the provision from chapter 255 quoted above, it appears that if there are adequate available balances in the Fish and Game fund such long-term financing, with its necessary expenses, need not be employed.

In this view, then, your Commission may seek the approval of the Governor and Council for the expenditure of the unexpended balances for the purposes of section 2 of chapter 254.

Very truly yours,

Warren E. Waters
Assistant Attorney General

WEW:RM